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FREEDOM FOUNDATION (FF)

and

IZWE LAMI (IL)

Submission

in response to the call for

Public Comment

on the

LABOUR LAW AMENDMENT BILL, 2025

and the

LABOUR RELATIONS AMENDMENT BILL, 2025

For the Attention of:
Director General, Department of Employment and Labour,
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PRELIMINARY: We respectfully we request the opportunity to lead oral evidence to the Department of Labour.

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1. EXECUTIVE SUMMARY

The Freedom Foundation and Izwe Lami, led by CEO Leon Louw, welcomes the invitation to comment on the proposed exemption, and respectfully requests permission to lead oral evidence.

This Submission presents incontrovertible arguments and evidence to the effect that the proposed amendments would be counterproductive, would inflict severe harm of our most needy citizens and should be amended so as to maximise the interests of all affected parties.

2. WHO WE ARE?

The Freedom Foundation (FF) is an independent policy institute. The FF is a non-partisan, non-profit organisation dedicated to promoting liberty and prosperity for all, including economic freedom, individual liberty, the rule of law and good governance. Izwe Lami (IL) is an affiliated institute primarily concerned with land titling for all land occupiers, including all unemployed people who possess and occupy, but do not own land. Land titling is the quickest, easiest, most empowering and most transformative way to empower the poor.

We, and hence this Submission, are strictly apolitical. We are the only think tank left in South Africa which is strictly politically neutral. We distance ourselves from all politicised debate. We are concerned solely with the promotion of good policies by all political, social and traditional formations. We are not in any way associated or identified with anything partisan, especially not any political party or vested interest. Here, we act on behalf of the those who do not have a job or a voice, and are seldom considered in policy formulation.

Founded by Leon Louw in 1973 and under him, the Free Market Foundation (FMF) advocated on behalf of the unemployed over several decades. We brought the seminal court case against Bargaining Councils extensions to non-parties, which has led to the new proposal that SMEs are exempt from bargaining council rules for two years. While we applaud this first step, it does not go far enough and should be a complete, permanent exemption. Agreements – all agreements – should bind only parties to such agreements.

The application of agreements, any agreements, to non-parties is inherently, fundamentally and profoundly unjust and unethical.

Non-parties include not just employers, who are typically presumed subjected to other people's agreements, but much more importantly, the unemployed. To subject destitute people denied an effective voice to the agreements of privileged elites with employers or employees is unconscionable.

The new Foundation draws and improves on the FMF's dedicated work whilst under Louw's leader4ship to improve employment prospects for the unemployed, and thus the dignity which comes with a paid job, an honest and earned livelihood, and being able to provide food and the necessities of life for individuals and their dependents. This is an often, unacknowledged feature of long-term unemployment but one which eats away at the fabric of society and creates a two-tier economy.

Unemployment promotes, rewards and encourages crime, domestic violence, drug abuse, the generation of 'lost' youth, and squandered potential which can never be regained. Meanwhile, those fortunate enough to have or provide jobs are represented and protected by organised business and labour. It is not the government's legitimate job to tilt the playing field in their favour. The government should be unbiased. To the extent that there might be bias, it should be for the unemployed. nd should not , and their prospects enhanced. The gap ever widens.

3. THE FATAL CONCEIT: PROTECTING THE PROTECTED

3.1. Good intentions are not enough

The Labour Law and Labour Relations Amendment Bills of 2025/2026, although noble in stated if not actual intent – the protection of workers in employment – proceed from a catastrophic misunderstanding of the South African crisis. By trying to increase the security and privileges of those who have jobs (the Insiders) the government would thicken the regulatory wall that condemns 12 million job-seekers (the Outsiders) to unemployment, humiliation and destitution.

3.2. True unemployment rates

Few appreciate that that there is not just one rate of 'unemployment'. There are many, and some are arguably more important than the 'official' unemployment

rate. Experts appreciate the distinction between ‘official’ and ‘expanded’ rates, but not necessarily other rates, such as that of different races, genders, ages, contexts, skill levels and more.

Paradoxically, the real ‘unemployment rate’ is *not* the ‘official’ rate but the ‘expanded’ rate.

By the true (“expanded”) definition nearly half (43%) of the workforce are unemployed. The most commonly cited “official” definition (33%), horrific though it is, gives an exaggerated impression of how many people have jobs.

3.3. Things are worse when broken down into subgroups. Up to 70% of young black women are unemployed, so that only 3 in a group of 10 have a job. One of the most vulnerable groups is people with disabilities. Thie unemployment rate approaches 100%. It varies from 90% to 99.9%. This number is hard to believe but it has been documented in the Tshwane Council.

3.4. **Welfare for the well-to-do**

It is almost always forgotten when discussing unemployment that many or most of the unemployed to not qualify for or receive social grants. The extent of their dentition and lack of concern for it is a profound national disgrace.

3.5. **Justice and unfulfilled promises**

The proposed reform is not "social justice"; it is statutory privilege and elitism. It would intensify existing “barriers to entry” for the country’s destitute millions. It contradicts promises in the State of the Nation Address (SONA), the Budget and elsewhere to remove barriers, attract investors and promote growth. There are rare aspects of sense, such as ‘3 month run-in’ hiring honeymoon but they do not go anywhere near what is required to offset the negatives.

3.6. **Intended consequences (sic)**

The devastating impact that the proposals would have on the poor is easily excused as ‘unintended consequences’, but when negative consequences are so obvious and inevitable they must be presumed intended. Victimisation of the unemployed for unjust benefit of the employed must be presumed an intended consequence.

3.7. **No free lunch – TANSTAAFL**

The most incontestable law of basic economics is the "there ain't no such thing as a free lunch" (TANSTAAFL). Every benefit has a cost. All intended benefits for those fortunate and privileged enough to be employed occur at the cost of those forced by law into unemployment. Everything that makes it more costly, risky and difficult to employ people reduces the prospect of jobs for the jobless. Even those with jobs will on average earn less because of the extent of availed funds that must be diverted to covering the cost of whatever benefit there might be, In short, fewer people will be employed and this fortunate enough to be employed will earn less.

3.8. **Is the devil in the details?**

Reality does not, of course, entail such numerical absolutes. Some employed people will be worse-off due to the reduction in job-creation investment. Furthermore, higher employment costs result in technology substitution – the replacement of people by machines and IT. This is especially true in the age of artificial intelligence (AI). Indeed, all exerts are concerned by the extent to which almost every job could be replaced by automation over the next few years.

Also, not all unemployed people will be losers. Those fortunate enough to get jobs despite the statutory bias against them might be net beneficiaries. But the dice are heavily loaded against them. One of our nation's great tragedies is the absence of the organised unemployed. What the country needs is influential unions or other groups that promote the rights and interests of the unemployed.

The proverbial 'bottom line' is that on balance the proposed reforms will benefit a few, but not all people with jobs and victimise nearly all people without jobs.

4. AI, THE TSUNAMI?

The AI revolution has not been mentioned in the discourse surrounding these proposals. This is extremely disturbing. No labour law should be considered without intensive and informed consideration of AI. This might be the very worst time in history since or even before the Industrial Revolution to propose anything that might make giving people jobs more risky, costly and dangerous. Quite the opposite, all attention should be focussed on **HOW TO FACILITATE EMPLOYMENT.**

5. FUNDAMENTALLY THE LABOUR MARKET SHOULD EMBRACE:

5.1. Freedom of Contract:

Any person unemployed for more than 6 months should have the right to waive specified BCEA benefits (such as the minimum wage (NMW) or dismissal in exchange for the absolute right to take whatever jobs are on offer, especially if they might acquire skills, on-the-job training, meals etc..

5.2. The Right to Work:

It should be a fundamental human right for unemployed people to sell their labour voluntarily agree terms subject to common law protection.

5.3. Permanent Probation:

The 3-month "run-in period" should be permanent for all micro-enterprises in order to encourage "fearless hiring" until there is full employment

5.4. Job-Seekers Exemption (JSE):

The FF and IL further recommend a formal exemption for the long-term unemployed from labour law that conflicts with common law rights and freedom of contract. The rights of free citizens should be respected, especially their control over their own lives, incomes and dignity.

Any person who has been unemployed for more than a specified period of perhaps 6 or 12 months should have the basic human right to waive the NMW, statutory severance limits, and other anti-employment and freedom of choice measures. This would restore freedom of contract and allow the most vulnerable and destitute, especially the youth, and more especially young black women, to seek work based on willingness to work and learn rather than suffer daily humiliation being priced out by the market.

5.5. The Right to be Enterprising:

There is a paltry concession made in the proposals for small, medium and emerging enterprises (SMMEs). This enjoys far less attention that reality demands. Despite the horrific unemployment numbers, everyone knows that ‘the unemployed’ are not truly unemployed in the sense that they are doing the best they can in the so-called ‘informal sector’.

That this is a misnomer is important. It is neither ;informal' nor is it a 'sector'. It is overwhelmingly formal and covers all sectors. What characterises it is that almost everything called the ;informal sector' has been criminalised. There is serial non-compliance with town planning, building, labour, tax and others laws. It would more accurately be called the 'criminalised', 'shadow' or 'underground' economy. That is incidental to the main issue which is that the role of the criminalised economy ('informal sector') provides real world employment, including self-employment, to many or most of the officially 'unemployed'.

SMMEs, like the unemployed, are essentially voiceless and are massively under-appreciated contributors to jobs, incomes and wealth. Estimates vary from 8% to 25% of the economy (GDP).

The law should make it maximally easy for this 'sector' to operate. Instead existing laws as well as the current proposals criminalise a vital part of the well-being of our neediest people.

6. FUNDAMENTAL FLAW: OUTLAWING THE UNEMPLOYED

Labour law and policy continues to operate under the delusion that more law equals more protection. Every 'protection' granted to a person with a job acts as a barbed-wire fence keeping the 12 million South Africans without a job from getting one. These Bills do not protect workers; they protect the *aristocracy of the employed* at the expense of the excluded.

As stated above, the two Bills thicken the regulatory walls making the "barriers to entry" for the unemployed and their SMME employers even higher keeping the 12 million unemployed out of the economy and in purgatory.

They ignore the rights of the unemployed and survivalist employers – those seeking jobs and will do nothing to reduce South Africa's disgraceful unemployment rate. What is proposed will further cement the **'Insiders'** ***versus*** **'Outsiders'** rift which characterises South Africa's job market.

7. INSIDERS VS. OUTSIDERS.

This Submission is less concerned with *current* employees and employers than with the aspects of how it thickens the "regulatory wall" keeping the 12 million unemployed

South Africans out of the economy. **We do not address other amendments** such as Simplified Procedural Fairness relating to CCMA claims.

8. KEY AMENDMENTS IMPACTING UNEMPLOYMENT

8.1. Increased Severance Pay
8.2. Protections for "Atypical" Workers
8.3. Gig worker protection
8.4. Changes to Dismissal and Probation
8.5. A revised National Minimum Wage
8.6. Changes to On Call rules
8.7. A two year exemption for SMEs from Bargaining Council extensions to non-parties
8.8. Overhaul of Parental Leave
8.9. Reinstatement of High Earners

9. THE 2026 BILLS' IMPACT ON THE UNEMPLOYED

9.1. **Doubling Severance Pay**

"Exit Tax" and the Death of the Entry-Level Job

Doubling severance pay (from 1 to 2 weeks) is a 'brick-on-toe' policy and prospective "death penalty" for small businesses If it costs twice as much to let someone go, an entrepreneur will only hire a "sure bet" (someone already skilled and employed elsewhere). This leaves the **unskilled youth**—who represent the highest risk—permanently sidelined .

By doubling the cost of letting someone go, you have doubled the risk of hiring them. Capital will move toward automation or stay idle rather than risk a 2-week-per-year liability.

9.2. **Regulatory Kidnapping of the "Ladder of Opportunity" (Gig Work)**

Reclassifying app-based drivers and platform workers as "employees".

Digital platforms are the only sector currently absorbing low-skilled labour at scale. By forcing them into a rigid "employee" box, the Bill destroys the **marginal job**. If a platform's cost per worker rises by 30%, they will simply "de-activate" the bottom 30% of earners—sending them back to the breadline.

9.3. **The "Right to Work" vs. The National Minimum Wage (NMW)**

Compulsory Unemployment

The 2026 NMW increase to R30.23 and the exclusion of non-cash benefits. Every cent added to the NMW makes a "low-productivity" person legally unemployable. The report should argue that the NMW is a **"compulsory unemployment"** law. The Right to Work at a price that reflects the worker's current skill level and the employer's ability to pay, allows young inexperienced people to gain the experience needed to eventually earn more.

9.4. **The "Hiring Honeymoon": A Half-Measure for Freedom**

A glimpse of sanity

The **3-month run-in period** where unfair dismissal protections are limited is the only pro-unemployed part of the Bill. It lowers the fear of the CCMA for employers. This should be permanent for all SMEs; voluntary employment where the employer has mitigated risk is the fastest way to turn an unemployed person into a worker.

9.5. **Reclassifying Gig Workers as Employees**

Killing the "First Rung"

Gig work is often the first step into the economy for the unskilled. By forced-employee-status, you raise the cost per worker, leading platforms to de-activate thousands of low-tier earners and has unintended consequences. It aims to protect vulnerable workers but in reality will result in many 'unemployed drivers' deprived of even the most basic living.

9.6. **The National Minimum Wage**

The Economic Floor

We have long argued that a NMW only helps those already in a job and does nothing, indeed accentuates those seeking a job, any job. If a person's current skill level is worth R20/hour to the market, and the law mandates R30.23, that person is now **legally unemployable**. You have effectively **outlawed** their right to work. Ask the people in the long lines of seeking work at intersections if they would prefer a low paid job at less than the NME, or nothing at all. The answer is half a loaf is better than no bread. These rates are set by those sitting in comfortable air conditioned offices living on fat salaries with, it seems little regard for what is

actually happening on the streets. Then society wonders why the crime rate is so high. These people live with despair that those of us who have jobs can hardly appreciate.

9.7. **On-Call / Zero Hours Protection**

Destroying Flexibility

This is intended to provide protection for vulnerable workers, which is laudable, but again has unintended consequences. Small and other retail and service firms survive on 'if-and-when' labour. One only has to look at bikes assembled at the side of garage forecourts desperately waiting for a summons to deliver groceries to understand making these people "employees" will kill any prospect they have of earning a daily sum.

Mandatory cancellation pay makes these flexible, entry-level roles too expensive to maintain. And if classed as 'employees, too risky given the new severance pay proposals which will result in fewer shifts**.** Retailers will cut 'extra' help to avoid cancellation pay.

9.8. **Shared Parental Leave: social engineering by statute.**

The Absence Risk

While socially noble, this increases the 'hidden cost' of a new hire. Small firms will view every young applicant as a potential 4-month vacancy they cannot afford to fill twice. Employers may avoid hiring those likely to take 4+ months leave, thus introducing potential discrimination in hiring policies.

9.9. **Reinstatement & The Rule of Law**

Equality before the Law

The Bill's R1.8 million reinstatement cap is a rare admission that forced employment is destructive. If reinstatement is too disruptive for a CEO, it is too disruptive for a clerk. Reinstatement should be scrapped for *all* employers to allow for "clean breaks" and financial settlements. Reinstatement never works. It is forced remarriage after an acrimonious divorce. Better for both parties to split and go their separate ways.

10. BARGAINING COUNCIL EXEMPTIONS

10.1. Inherently unjust discrimination

The proposed extension of Bargaining Council exemptions to SMEs with fewer than 50 employees is another rare moment of sanity, but ultimately it is a cowardly half-measure**.**

10.2. Labour cartels

Bargaining Councils are the ultimate "labour cartels" that exist to protect big business and big unions at the expense of the entrepreneur and the unemployed.

10.3. Constitutional Court Bypassed?

In 2016, the Free Market Foundation under my leadership, and together with Herman Mashaba, brought a legal case against the Minister of Labour's action to automatically grant extensions to non-parties and instead apply her mind to the catastrophic implications to SMEs and the unemployed.

10.4. Big bullies?

Bargaining Councils allow "Big Business" and "Big Unions" to collude. Arguably that is legitimate, but then only for colluding parties. They set high wages and expensive benefits that *they* can afford, then use the Minister of Labour to **extend those costs to every small competitor** in the industry. A two-year exemption isn't a gift; it's a stay of execution.

10.5. The "Cliff Effect"

The 24 month limit is absurd. What happens on day 731? Does the business suddenly become 30% more productive because a calendar page turned? No. You are simply telling a successful start-up that it's time to stop growing or start firing."

10.6. Discrimination Against Small Employers

Our core philosophy is Economic Liberty. It is fundamentally "unfair" and "unconstitutional" for a private council of strangers to dictate the terms of a contract between an employer and an employee in a completely different town or business.

Exempting a start-up for two years is like giving a drowning man a two minute

snorkel. It doesn't solve the problem; it just delays the tragedy. If you want to solve the 14.2 million unemployment crisis, the exemptions should be permanent and universal for every small and medium enterprise (SME) in South Africa. Let the small man compete on his own terms, not his corporate competitors.

10.7. **The "Opt-In" Principle:**
Bargaining Council agreements should **only** apply to the parties who actually signed them

10.8. **Permanent SME Freedom:**
Any business with fewer than 100 employees should be **automatically and permanently exempt** from any central wage determinations, restoring their "Right to Contract."

Conclusion

South Africa does not need more laws to govern how people work; it needs more people working. To achieve that, these Bills should be abandoned and focus turned to one single objective: making it easier, cheaper and safer for an employer to say "Yes" to a job seeker. Sadly these Bills do the opposite.

In short, **liberate job-seekers.**

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LEON LOUW
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